IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1994 of 2005
With
CIVIL APPLICATION No. 6133 of 2005
In
FIRST APPEAL No. 1994 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJHANS CONSTURCTION CO. - Appellant(s)
Versus
ASSISTANT ENGINEER & 11 - Defendant(s)

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Appearance :
MR PC KAVINA for Appellant
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 2,4 - 12.
MR KV GADHIA for Respondent (s) : 3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/10/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is an appeal by M/s. Rajhans Construction Company, a partnership firm, through its partner Rathibhai Hansraj Patel against the judgment and award dated 6.1.2004 passed by the learned Judge of the Labour Court, Valsad in Fatal Case No. 51 of 1995, directing payment of balance compensation amount and interest thereon with costs.

2. Short facts necessary for disposal of the present appeal are that one Ambadas who was employed as an employee by the present appellant, suffered an accident, received grievous injuries and thereafter died on 17.9.95.The successors/dependents/legal representatives of the said Ambadas filed Fatal Case No. 51/95 in the above-referred Labour Court, submitting inter alia, that they are entitled to much more than what was awarded/given to them by the Insurance Company. They joined the Assistant Engineer, P.W.D., M/s. Vikram Bhagvanji Tachak (contractor) and the New New India Insurance Co. Rajkot, as party-respondents, submitting inter alia, that the contract was given by the non-applicant-respondent no.1 – Assistant Engineer to Vikram Bhagvanji and M/s. New India Insurance Company had accepted the insurance.

3. Present appeal has been filed by M/s. Rajhans

Construction Company, submitting inter alia, that M/s. Vikram Bhavanji Tachak in its turn, had given a sub-contract in favour of the present appellant and ultimately, they may be held liable to make payment under the award.

4. The appellant along with the appeal filed an application seeking leave from the Court to file an appeal, the application which was filed along with the appeal came to be registered later as Civil Application No. 4549 of 2005, by order dated 19.7.2005, the application was allowed and the applicant was granted leave to file an appeal under Section 30 of the Workmen's Compensation Act, 1923.

5. Learned counsel for the appellant submits that the appellant is not disputing the right of the legal representatives of the deceased to receive the full money with interest, but the appellant is confining its argument to the only question that whether interest is to be paid by the appellant or by the Insurance Company.

6. Referring to the Division Bench judgment of this Court in **First Appeal No. 2789 of 2004 in the case of Varshaben M. Sachaniya Vs. Rahimbhai Jilmahmadbhai Dheba, decided on 20th April, 2005,** it is submitted that the Insurance Company is statutorily and contractually

liable to pay the interest and the learned Commissioner under the Worksmen's Compensation was unjustified in exonerating the Insurance Company from the liability of the interest. It is also submitted that the liability in relation to the amount of compensation stood amended on 15.9.95 and as the death took place on 17.9.95, the Insurance Company, taking into consideration the effect of the amendment enhancing the amount of compensation was obliged to make statutory payment, specially when the present appellant or any other contractor was not disputing its liability. It is submitted that the Insurance Company paid a sum of Rs. 78,824/- only against its liability of Rs.1,97,060/- and despite reminder from the appellant, the Insurance Company did not make the full payment, the wrong was with the Insurance Company. It is further submitted that present is not a case where because of the lapses on the part of the appellant, the Insurance Company is required to pay the interest.

7. Learned counsel for the respondent-Insurance Company, on the other hand, submitted that the insurance though is to be taken statutorily, but the Insurance Company can limit its liability to a particular amount or may limit its liability for non-payment of the interest or penalty. Referring to the contractual condition as

embodied in the insurance policy, it is submitted that as the Insurance Company has made covenant in the policy that the Insurance Company would not be liable to pay penalty or interest accruing because of the lapses on the part of the insured, the learned Commissioner was absolutely justified in exonerating the Insurance Company.

8. In the matter of Varshaben M. Sachaniya (supra), a Division bench of this Court has taken into consideration the judgment of the Supreme Court in the matter of **Ved Prakash Garg Vs Premi Devi, reported in 1998 ACJ 1 (SC),** and yet another judgment of the Supreme Court in the matter of **P.J. Narayan Vs. Union of India & others, reported in 2004 ACJ 452** and has come to the conclusion that in view of the direct judgment of the Supreme Court, it must be held that the learned Commissioner committed grave error in not holding the Insurance Company liable to pay the interest at the rate of 9% on the awarded amount. The facts before us are almost identical. Therefore, there would be no problem in following the said judgments. However, it is yet to be seen that after the death of the employee, Insurance Company, on a call from the employer made some payment to the successors of the deceased, but without realizing that the statutory

liability stood enhanced beyond what was paid by them. From the records it also appears that on 9.6.2001, the employer asked the Insurance Company to make full payment, because, the payment already made was falling short of the statutory liability. From the records, it again appears that the respondent-company took an exception to the letter sent by the employer and said that the matter has already entered the corridors of the Labour Commissioner.

9. Learned counsel for the respondent even on the face of these facts floating on the surface of the records submits that in light of the judgment in the matter of Ved Prakash Garg, liability of the Insurance Company would be limited and they would not be liable to pay interest.

10. In the matter of Ved Prakash, employer had started disputing absolute liability and therefore, successors of the deceased employee went to the Labour Commissioner. The Supreme Court observed that as the employer was disputing its liability and so long the liability was not fixed or finally determined, the Insurance Company could not make the payment. The Supreme Court further observed that in cases where payment is delayed because of the dispute raised by the employer, any penalty is imposed or interest becomes

payable, then, the Insurance Company would not be liable. The facts of the matter of Ved Prakash were totally different. In the case on hand, the employer did never challenge its liability, rather was asking the Insurance Company to make full payment in accordance with statutory liability and the terms of the agreement. Unfortunately, this bona fide gesture on the part of the employer has been taken to be a lapse on employer's part. The Insurance Company was obliged to make payment in accordance with the amendment incorporated in the Act on 15.9.95 and if they did not discharge their statutory liability either on their own or despite reminders from the employer, then they cannot be allowed to say that the interest still will have to be paid by the employer. In our considered opinion, there was no lapse on the part of the employer.

11. Taking into consideration the totality of the circumstances, we are of the considered opinion that the appeal deserves to be allowed and the liability to pay the interest deserves to be fastened upon the Insurance Company.

12. We are told that the present appellant has deposited the entire amount of interest as awarded and the said amount has been withdrawn by the respondent nos. 4 to

12 (successors of the deceased employee). As the amount had already been deposited by the employer, Insurance Company would be obliged to reimburse the said amount either by making payment directly to the appellant or by making deposit in the court with interest @ 9% from the date of the deposit made by the appellant till date of repayment by the respondent-Insurance Company. The appeal stands allowed. No order as to costs. Consequently, Civil Application stands disposed of.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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